

ESTATE OF YASHAKE OBI
(QUINAIELT ALLOTTEE NO. 1279, DECEASED)

IBIA 73-19

Decided December 27, 1973

Petition to Reopen.

Denied.

Indian Probate: Reopening: Waiver of Time Limitation

Petition to reopen filed more than three years after the final determination of heirs will not be granted unless there is compelling proof that the delay was not occasioned by the lack of diligence on the part of the petitioning party.

Indian Probate: Reopening: Waiver of Time Limitation

It is in the public interest to require Indian probate proceedings be concluded

within some reasonable time in order that property rights of heirs and devisees in Indian allotments be stabilized.

APPEARANCES: Gladys Phillips, Esq., for petitioner, Harold George.

OPINION BY MR. WILSON

This matter comes before the Board upon a petition for reopening of probate filed by Gladys Phillips, Esq., for and in behalf of Harold George, hereinafter referred to as petitioner, pursuant to 43 CFR 4.242.

The estate herein having been closed for more than three years the matter was properly forwarded to the Board of Indian Appeals by Administrative Law Judge Richard J. Montgomery in accordance with the provisions of 43 CFR 4.242(h).

The decedent according to the records died intestate about 1914. The estate, however, was not probated until November 18, 1930, due probably to the lack of communication regarding the date of death.

In support of his petition to reopen the petitioner alleges that he had no actual notice of the probate proceedings and that he was not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted.

Notwithstanding the fact he may not have had actual notice as alleged there is nothing in the petition or probate record indicating any effort on the part of the petitioner over the period of some 34 years to inquire into, or assert any right or claim in the estate. The petition or the probate record furthermore does not indicate that the petitioner was under a disability, due to minority or lack of competence, during these years which would have precluded him from inquiring into or asserting a claim in the estate. Moreover, the petitioner has failed to show the existence of a manifest injustice resulting from his omission as an heir in the estate.

The Department of the Interior over the years has consistently adhered to a strict policy of refusing to entertain appeals not timely filed. Estate of Ralyen Rabyea Voorhees, 1 IBIA 62 (1971). The same policy is applicable to petitions for reopening filed beyond the three-year limitation provided in the regulations, Estate of George Minkey, 1 IBIA 1 (1970), affirmed on reconsideration, 1 IBIA 56 (1970).

The Board is not unmindful of the Secretary's power under 25 CFR 1.2 to waive and make exceptions to his regulations in Indian probate matters. However, such authority or power will be exercised only in cases where the most compelling reasons are present. Estate of Charles Ellis, IA-1242 (April 14, 1966); Estate of George Minkey, *supra*. Reopening of estates will be permitted only where it appears that the petitioner has not been dilatory in seeking his remedy. Estate of Alvin Hudson, IA-P-17 (May 29, 1969); Estate of George Squawlie (Squally), IA-1231 (April 5, 1966); Estate of George Minkey, *supra*; Estate of Sophie Iron Beaver Fisherman, 2 IBIA 83 (October 16, 1973).

Moreover, the public interest requires Indian probate proceedings be concluded within some reasonable time in order that property rights of legitimate heirs and devisees be stabilized. Estate of Abel Gravelle, IA-75 (April 11, 1952). To hold property rights of heirs to allotted lands forever subject to challenge, would not only constitute an abuse, but would seriously erode the property rights of those whose heirship in land has already been determined. Estate of Samuel Picknoll (Pickernell), 1 IBIA 168, 78 I.D. 325 (1971).

It is the finding of the Board that Harold George's petition for reopening falls short of meeting the requisite standards set forth in above-cited cases to justify the exercise of Secretarial discretion

to waive the three-year limitation contained in 43 CFR 4.242(a). Accordingly, the petition must be denied.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the petition to reopen filed by Harold George is DENIED and the order determining heirs entered under date of November 18, 1930, is AFFIRMED.

This decision is final for the Department.

Alexander H. Wilson, Member

I concur:

David J. McKee, Chairman